

Exhibit G

Sara Jayne Kennedy vs HPS 50th Avenue Associates, LLC, et al.
HONORABLE JOHN W. THORTON, JR. on 12/19/2017

1 IN THE CIRCUIT COURT
2 OF THE ELEVENTH JUDICIAL CIRCUIT
3 IN AND FOR MIAMI-DADE COUNTY, FLORIDA

4 CASE NO. 2015-6405 CA 40
5 2014-2090 CA 40
6 2014-5447 CA 40

7 SARA JAYNE KENNEDY,
8 Plaintiff,

9 -vs-

10 HPS 50TH AVENUE ASSOCIATES, LLC.,
11 HPS BORDEN AVENUE ASSOCIATES, LLC.,
12 THE RELATED COMPANIES, INC.,
13 and BRUCE BEAL, et al.,
14 Defendant.

15 _____/
16 GLASSWALL, LLC,
17 Cross-Plaintiff,

18 -vs-

19 HPS 50TH AVENUE ASSOCIATES, LLC.,
20 HPS BORDEN AVENUE ASSOCIATES, LLC.,
21 THE RELATED COMPANIES, INC.,
22 and BRUCE BEAL, et al.,
23 Cross-Defendants.

24 _____/

25 * * * * *

TRANSCRIPT OF PROCEEDINGS

BEFORE: JOHN W. THORTON, JR.
DATE TAKEN: December 19, 2017
TIME: 9:50 a.m. - 10:18 a.m.
PLACE: Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130
REPORTED BY: DANIA ALEN, FPR
AND NOTARY PUBLIC

* * * * *

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<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2 GIOVANNA ABREU-O'CONNOR, ESQUIRE</p> <p>3 Marko Magolnick, Attorney at Law</p> <p>4 3001 S.W. 3rd Avenue</p> <p>5 Miami, Florida 33129</p> <p>6 abreu@mm-pa.com</p> <p>7 APPEARING ON BEHALF OF COLOMBO AND KENNEDY</p> <p>8</p> <p>9 JESSE DEAN-KLUGER, ESQUIRE</p> <p>10 Jesse Dean-Kluger, P.A.</p> <p>11 1550 Biscayne Boulevard</p> <p>12 Miami, Florida 33132</p> <p>13 jdk@jdkpa.com</p> <p>14 APPEARING ON BEHALF OF DEFENDANT/CROSS-PLAINTIFF</p> <p>15 GLASSWALL</p> <p>16</p> <p>17 ALVIN LODISH, ESQUIRE</p> <p>18 and RICHARD D. SHANE, ESQUIRE</p> <p>19 Duane Morris, LLP</p> <p>20 200 S. Biscayne Boulevard</p> <p>21 Suite 3400</p> <p>22 Miami, Florida 33131-2318</p> <p>23 rdshane@duanemorris.com</p> <p>24 alodish@duanemorris.com</p> <p>25 APPEARING ON BEHALF OF DEFENDANTS</p> <p>1 JAMES P. CINQUE, ESQUIRE</p> <p>2 Law Offices Cinque & Cinque, P.C.</p> <p>3 845 Third Avenue</p> <p>4 New York, N.Y. 10022</p> <p>5 cinque845@aol.com</p> <p>6 APPEARING ON BEHALF OF GLASSWALL</p> <p>7 JEFFREY GILBERT, ESQUIRE</p> <p>8 Cozen O'Connor</p> <p>9 200 S. Biscayne Boulevard</p> <p>10 Suite 3000</p> <p>11 Miami, Florida 33131-2305</p> <p>12 jgilbert@cozen.com</p> <p>13 APPEARING ON BEHALF OF WESTCHESTER</p> <p>14 INSURANCE COMPANY</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 Gilbert from Cozen O'Connor on behalf of Westchester</p> <p>2 Fire Insurance Company.</p> <p>3 THE COURT: Okay. So what's the story?</p> <p>4 MR. DEAN-KLUGER: Okay. Your Honor, so we're</p> <p>5 here on what was noticed as a request for a special</p> <p>6 set arising out of the Court's instructions from the</p> <p>7 October 17th hearing where the parties were ordered</p> <p>8 to submit memorandum and then subsequently request a</p> <p>9 special set. There was an order in that time period</p> <p>10 that Your Honor issued denying a motion to lift stay.</p> <p>11 There was no formal motion to lift the stay, and I'd</p> <p>12 like to take this opportunity here today to sort of</p> <p>13 flesh out --</p> <p>14 THE COURT: I thought this was a status</p> <p>15 conference.</p> <p>16 MR. DEAN-KLUGER: Well --</p> <p>17 THE COURT: Okay.</p> <p>18 MR. DEAN-KLUGER: I'd love to have a status</p> <p>19 conference. Great. And that's exactly -- I would</p> <p>20 love to treat it like one, Your Honor.</p> <p>21 THE COURT: I didn't see any motions. That's</p> <p>22 why I was wondering what you're -- where you're</p> <p>23 headed.</p> <p>24 MR. DEAN-KLUGER: Only to flesh out what's going</p> <p>25 on in New York versus these cases here. As a</p>
<p>Page 3</p> <p>1 PROCEEDINGS</p> <p>2 THE COURT: All right. 15-6405. Let me have</p> <p>3 appearances, please.</p> <p>4 MR. DEAN-KLUGER: Good morning, Your Honor,</p> <p>5 Jesse Dean-Kluger on behalf of</p> <p>6 Defendant/Cross-Plaintiff Glasswall, LLC. Also here</p> <p>7 with me today is Glasswall's counsel in the New York</p> <p>8 proceedings, both the federal court and the</p> <p>9 arbitration, Mr. James Cinque.</p> <p>10 MR. CINQUE: Good morning.</p> <p>11 MR. DEAN-KLUGER: He was in town on vacation</p> <p>12 anyway. He thought it might be helpful for him to</p> <p>13 show up. You heard his voice, and now you get him in</p> <p>14 person.</p> <p>15 MS. ABREU-O'CONNOR: Good morning, Your Honor.</p> <p>16 Giovanna Abreu-O'Connor on behalf of Ugo Colombo and</p> <p>17 Sara Jayne Kennedy.</p> <p>18 THE COURT: All right. Great. Good morning.</p> <p>19 MR. LODISH: Good morning, Your Honor, Alvin</p> <p>20 Lodish and Richard Shane on behalf of Monadnock</p> <p>21 Construction; HPS 50th Avenue Associates, LLC; HPS</p> <p>22 Borden Avenue Associates, LLC; The Related Companies,</p> <p>23 Inc.; and Bruce Beal.</p> <p>24 THE COURT: All right. Good morning.</p> <p>25 MR. GILBERT: Good morning, Judge. Jeffrey</p>	<p>Page 5</p> <p>1 beginning point, all of the cases pending before Your</p> <p>2 Honor were filed well in advance of the federal court</p> <p>3 action in New York. They predate, all three of them,</p> <p>4 predate that action.</p> <p>5 THE COURT: Okay.</p> <p>6 MR. DEAN-KLUGER: And I'll let Mr. Cinque in a</p> <p>7 moment flesh out the claims pending up there versus</p> <p>8 what's pending down here. There are several party</p> <p>9 defendants here that are not parties to that action.</p> <p>10 There are several claims that cannot be brought there</p> <p>11 that were lodged here first.</p> <p>12 Also, since the last hearing on October 7th --</p> <p>13 THE COURT: Sounds like you're arguing for</p> <p>14 something. Okay. Go ahead.</p> <p>15 MR. DEAN-KLUGER: I'm arguing for more</p> <p>16 opportunity to practice in front of Your Honor on</p> <p>17 this case. That's what I'm arguing for today.</p> <p>18 THE COURT: Nicely put.</p> <p>19 MR. DEAN-KLUGER: Thank you, Your Honor. And</p> <p>20 since the -- and since --</p> <p>21 THE COURT: Is that your mom or your dad who</p> <p>22 taught you to do that? I mean, I happen to know both</p> <p>23 of them, and I was just curious.</p> <p>24 MR. DEAN-KLUGER: It's a hybrid, definitely a</p> <p>25 hybrid. I try to take the good parts from both of</p>

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<p style="text-align: right;">Page 6</p> <p>1 them.</p> <p>2 THE COURT: Okay.</p> <p>3 MR. DEAN-KLUGER: And I guess I'm going to refer</p> <p>4 to the transcript from the last hearing where Your</p> <p>5 Honor indicated that, you know, once the arbitration</p> <p>6 award was confirmed that you were inclined to open</p> <p>7 this back up, allow discovery. They would probably</p> <p>8 re-file these motions to dismiss on personal</p> <p>9 jurisdiction, and we'd take that discovery. The</p> <p>10 arbitration award has been confirmed. That is</p> <p>11 completely over.</p> <p>12 THE COURT: Everything?</p> <p>13 MR. DEAN-KLUGER: The arbitration award has been</p> <p>14 confirmed. We submitted it to Your Honor. It's been</p> <p>15 confirmed.</p> <p>16 THE COURT: How many arbitrations are there?</p> <p>17 MR. DEAN-KLUGER: One. It's over.</p> <p>18 THE COURT: There is only one?</p> <p>19 MR. DEAN-KLUGER: No. There is a pending</p> <p>20 federal --</p> <p>21 THE COURT: Are you in agreement with that</p> <p>22 Mr. Lodish?</p> <p>23 MR. LODISH: That there was one arbitration,</p> <p>24 yes, there was one arbitration.</p> <p>25 THE COURT: Okay.</p>	<p style="text-align: right;">Page 8</p> <p>1 THE COURT: Some.</p> <p>2 MR. CINQUE: Well, most. Glasswall in Florida</p> <p>3 sued Beal and Related who were not parties in New</p> <p>4 York. Glasswall sued the New York/Florida for</p> <p>5 interference with the contract that was the subject</p> <p>6 of the arbitration award. And in the arbitration</p> <p>7 award, the arbitrators found that, in fact, Monadnock</p> <p>8 had breached the agreement by refusing to accept</p> <p>9 delivery of windows as they were being manufactured.</p> <p>10 So we have a finding now that there was a breach</p> <p>11 by Monadnock. It's clear on Page 10 of the award.</p> <p>12 So in order to prove an interference claim here in</p> <p>13 Florida, which Glasswall alleged here, we have to</p> <p>14 prove a contract, which we -- clearly everyone admits</p> <p>15 there was a contract; knowledge of the contract, I</p> <p>16 think we can easily establish that the Defendants</p> <p>17 here in Florida had knowledge of the contract; a</p> <p>18 breach of the contract, we have the arbitrators'</p> <p>19 award that, in fact, there was breach by Monadnock.</p> <p>20 All we have to prove is that the breach was procured</p> <p>21 by Related and Beal, and we can only prove that here</p> <p>22 in Florida, nothing to do with the fraudulent</p> <p>23 conveyance claim that was brought years later. The</p> <p>24 fraudulent conveyance claim was asserted just a</p> <p>25 couple of months ago in New York.</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. DEAN-KLUGER: The award has been confirmed</p> <p>2 by stipulation and order of the court.</p> <p>3 THE COURT: Okay.</p> <p>4 MR. DEAN-KLUGER: There is a federal court</p> <p>5 proceeding, but it post dates these actions, and I'm</p> <p>6 going to let Mr. Cinque step up, if you'll allow him,</p> <p>7 just to sort of flesh out the parties and claims to</p> <p>8 demonstrate to the Court that, you know, it really is</p> <p>9 necessary that the claims here are allowed to</p> <p>10 proceed. They don't exist up there. They cannot be</p> <p>11 brought up there; and, quite frankly, the parties</p> <p>12 just are not the same.</p> <p>13 THE COURT: Okay, Mr. Cinque.</p> <p>14 MR. CINQUE: Yes, Your Honor, good morning. The</p> <p>15 arbitration award has been confirmed, and Monadnock</p> <p>16 sued Glasswall in the federal court in New York, A,</p> <p>17 to confirm the award, which we stipulated to. The</p> <p>18 Judge signed the order. B, there is a claim that</p> <p>19 there was some sort of a fraudulent conveyance to</p> <p>20 avoid payment of the judgment. Those are the claims</p> <p>21 against Glasswall in New York, and that's it.</p> <p>22 In your stay order here about a year ago, Your</p> <p>23 Honor, you said that perhaps the arbitration will</p> <p>24 resolve some issues, and I will submit that it has.</p> <p>25 Glasswall --</p>	<p style="text-align: right;">Page 9</p> <p>1 So, Your Honor, I submit on behalf of Glasswall</p> <p>2 that the case should proceed here. They should be</p> <p>3 allowed to proceed on the claim of tortious</p> <p>4 interference with the contract and that the New York</p> <p>5 case has absolutely nothing to do with that. The</p> <p>6 parties are not even in New York; The Related and</p> <p>7 Beal, they're not parties to those cases.</p> <p>8 THE COURT: Okay.</p> <p>9 MR. CINQUE: Thank you, Your Honor.</p> <p>10 MS. ABREU-O'CONNOR: Your Honor, Giovanna</p> <p>11 Abreu-O'Connor on behalf of Ugo Colombo and Sara</p> <p>12 Jayne Kennedy. With regard to the claims involving</p> <p>13 Ms. Kennedy and Mr. Colombo, the only things pending,</p> <p>14 like Mr. Cinque has said, are tortious interference</p> <p>15 claims, and those can only be here in Florida.</p> <p>16 Ms. Kennedy and Mr. Colombo were not parties to the</p> <p>17 arbitration, and we submit to Your Honor that now</p> <p>18 they're entitled to a declaratory judgment indicating</p> <p>19 that they're not liable under the guaranties for the</p> <p>20 insurance because Monadnock has been determined to</p> <p>21 have breached the insurance and the bonds that</p> <p>22 Mr. Colombo and Ms. Kennedy were guarantors of are</p> <p>23 only triggered if Monadnock was not in breach, and</p> <p>24 that has been determined by the arbitration award.</p> <p>25 Similarly, Monadnock was made whole by the</p>

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<p style="text-align: right;">Page 10</p> <p>1 owners of the project. So it did not sustain actual 2 damages under the terms of the bond, and because the 3 declaratory relief claims in this consolidated 4 proceeding were, in reality, resolved by the 5 arbitration, the only issues that remain are the 6 tortious interference claims. And the parties 7 against whom those claims are, Related, Beal, HPS 50, 8 and HPS Borden are not parties in the New York 9 action.</p> <p>10 THE COURT: Okay, go ahead.</p> <p>11 MR. LODISH: Thank you, Your Honor.</p> <p>12 First of all, I'm not quite sure why we're here 13 'cause the day after they noticed this hearing for 14 status conference Your Honor entered your order --</p> <p>15 THE COURT: I'm looking at it on the screen.</p> <p>16 MR. LODISH: -- denying request to lift stay. I 17 could go through lots of things, Your Honor. Both 18 sides agree what is left in this case, and Your 19 Honor's order is correct, the New York litigation 20 goes on. There has been no jurisdiction found over 21 Bruce Beal. There has been no jurisdiction found 22 over The Related Companies. There's been no 23 jurisdiction found over HPS 50 or HPS Borden that are 24 all New York entities and an individual.</p> <p>25 So, first of all, what's happened before, Your</p>	<p style="text-align: right;">Page 12</p> <p>1 paid it. The fraudulent transfer issue goes to the 2 fact that Ugo Colombo sold all the assets of 3 Glasswall during the course of all this for 4 to 4 5 million dollars. So where is the money going to 5 come from to pay Monadnock for the arbitration award.</p> <p>6 So the issues that Sara Jayne Kennedy and Ugo 7 Colombo have is that they're the indemnitor 8 guaranties on the surety. That's their issue here. 9 That's their claim here is whether they're going to 10 have to pay as the indemnitor guarantors us because 11 Glasswall may or may not have the money. All of that 12 is being litigated right now in New York.</p> <p>13 And, in fact, Mr. Cinque I guess didn't tell you 14 that Glasswall had -- has filed a motion for 15 abstention up in New York up there saying wait, let's 16 have the Florida court hear it, not you hear it. So 17 that is pending before the federal court now. 18 Glasswall has also filed a motion --</p> <p>19 THE COURT: Has that been set for argument or 20 no?</p> <p>21 MR. LODISH: Well, the briefing schedule, I'm 22 just going to give you all of that. Let me 23 short-circuit that by saying that the briefing 24 schedule for all of that will end with opposition's 25 replies at the end of January. So presumably</p>
<p style="text-align: right;">Page 11</p> <p>1 Honor, way back was virtually nothing because 2 arbitration was required under the contract. They're 3 arguing taking this -- little snippets out of the 4 arbitration award that said that they should have 5 accepted windows which was a breach of the 6 subcontract. That portion of the arbitration award 7 all went to whether Monadnock was entitled to delay 8 damages. The arbitration panel essentially found 9 because of that fact and others, you don't get delay 10 damages.</p> <p>11 Did Glasswall counterclaim for breach of the 12 subcontract in arbitration? No. And will that be 13 the final answer on all of that? Absolutely, Your 14 Honor. It was absolutely a compulsory claim in the 15 arbitration. They never brought it and the Court -- 16 they didn't find that they breached the subcontract 17 which would lead to any type of remedy, pointed it 18 out because you're not going to get delay damages.</p> <p>19 There's no dispute that Glasswall was paid every 20 dime under their contract. They're not owed any 21 money. The only issue there today, Your Honor, my 22 client, Monadnock, was awarded approximately 23 \$1,500,000 out of the arbitration against Glasswall. 24 Westchester, the surety company, is still in the case 25 'cause they got to pay it because Glasswall hasn't</p>	<p style="text-align: right;">Page 13</p> <p>1 sometime in February the federal court will rule on 2 perhaps Glasswall's motion to dismiss the complaint 3 up there, will rule on their abstention request, and 4 then, you know, Westchester also has their matter, 5 which is really the primary matter, 'cause they're 6 the surety. They're going after Colombo and Kennedy 7 as the indemnitor guaranties on all that, and that is 8 all that Kennedy and Colombo were trying to get out 9 of down here. They're trying to get out of their 10 guaranty.</p> <p>11 All of this is being handled in New York, and 12 I'll turn it over to Mr. Gilbert because there's no 13 question New York is the only jurisdiction where the 14 surety issues and the indemnification and the 15 guaranty can be heard.</p> <p>16 So, Your Honor, I believe your order denying the 17 request to lift stay was proper. It is still proper. 18 You entered it on November 30th, the day after the 19 notice of hearing, that until the litigation is done 20 up in the federal court in New York, the state court 21 is done because Glasswall withdrew their complaint in 22 the state court to confirm the arbitral award. They 23 agreed to be in federal court, and so there was a 24 stipulation as to the award itself. Everything else 25 is all over the payment to our client for the award</p>

<p style="text-align: right;">Page 14</p> <p>1 and the indemnification and the guaranty. That's</p> <p>2 what it's all about, Judge, at this point.</p> <p>3 THE COURT: Okay. I'm getting a lot of shaking</p> <p>4 heads on the other side from left to right and back.</p> <p>5 MR. LODISH: That's been true for three years,</p> <p>6 Your Honor.</p> <p>7 THE COURT: Let me hear from them.</p> <p>8 MR. GILBERT: Judge, on behalf of Westchester we</p> <p>9 support your order denying the request to lift stay,</p> <p>10 obviously, for the reason that Mr. Lodish just said.</p> <p>11 There is a stipulation for the briefing schedule</p> <p>12 in New York that Westchester is supposed to file its</p> <p>13 motion to dismiss the amended complaint filed by</p> <p>14 Glasswall and the Colombos by January 9th, 2018, and</p> <p>15 then the reply papers would be due by them on</p> <p>16 January 31st, dealing with the -- all the issues that</p> <p>17 they're seeking to litigate down here.</p> <p>18 And I'll remind the Court, based upon the</p> <p>19 indemnity agreement, there is a mandatory forum</p> <p>20 selection clause, and it just states specifically</p> <p>21 that indemnitors, which are the Colombos, agree that</p> <p>22 all actions or proceedings directly or indirectly</p> <p>23 from the -- arising directly or indirectly from this</p> <p>24 agreement shall be litigated only in courts having</p> <p>25 status within the state of New York and consent to</p>	<p style="text-align: right;">Page 16</p> <p>1 years trying to get that finding. So what we're</p> <p>2 asking Your Honor to do is to let Glasswall say,</p> <p>3 well, the procuring agent of that found breach was</p> <p>4 Beal and Related, and there is nothing in New York,</p> <p>5 indemnifications, bonds, nothing has to do with that</p> <p>6 issue, Your Honor, and that's why at a minimum I</p> <p>7 think you should permit Glasswall to pursue the claim</p> <p>8 for tortuous interference against Related and Beal.</p> <p>9 New York, they haven't heard anything about that</p> <p>10 claim in New York. It's just not there.</p> <p>11 THE COURT: All right. Talk to me about that.</p> <p>12 MR. LODISH: Your Honor, first of all, this is</p> <p>13 what under, if you -- Your Honor has it, but this is</p> <p>14 under the issue of responsibility for delay. This is</p> <p>15 the arbiters' award. This is what they say.</p> <p>16 "We find that Monadnock wrongfully refused to</p> <p>17 accept delivery of the windows, including ancillary</p> <p>18 materials needed for their installation in the fall</p> <p>19 and winter of 2013, 2014 in breach of the</p> <p>20 subcontract. While it is true that Glasswall was</p> <p>21 struggling to meet its contractual obligations and</p> <p>22 there were quality control issues, when faced with</p> <p>23 those obstacles, Monadnock did not exercise its right</p> <p>24 to terminate the subcontract, as it could have done,</p> <p>25 for failure to meet the agreed-to delivery schedule.</p>
<p style="text-align: right;">Page 15</p> <p>1 all the procedural jurisdictional issues.</p> <p>2 So there is a mandatory forum selection clause</p> <p>3 with respect to the indemnity agreement. That's</p> <p>4 what's being litigated in New York exactly right now,</p> <p>5 and we fully support the order denying the request to</p> <p>6 lift stay. And I would just like to add my two</p> <p>7 cents. It's my first hearing. I'm here for Raquel</p> <p>8 Fernandez, but we're just here on a motion to set a</p> <p>9 hearing. We're not here on the hearing.</p> <p>10 THE COURT: Right. No. I got you. You know,</p> <p>11 it's okay, 'cause I want to hear about what's going</p> <p>12 on.</p> <p>13 MR. CINQUE: And, Your Honor, if I may just be</p> <p>14 heard. We heard a lot about indemnification. It has</p> <p>15 nothing to do with Glasswall's claim for interference</p> <p>16 with the contract. That's what I'm here to argue,</p> <p>17 that there's no reason -- we haven't heard one thing</p> <p>18 as to why that's going to proceed. Beal and Related</p> <p>19 intentionally interfered with the contract Glasswall</p> <p>20 had to provide windows, and as I said before -- and I</p> <p>21 don't want to repeat myself -- we have a finding of</p> <p>22 breach. The arbitrators said clearly Monadnock</p> <p>23 breached the agreements. They used the word breached</p> <p>24 the agreements by failing to accept delivery of</p> <p>25 windows. So we now have that finding. We spent</p>	<p style="text-align: right;">Page 17</p> <p>1 Rather, it issued a series of notices of default,</p> <p>2 notices of continuing default. All the while,</p> <p>3 Glasswall continued to manufacture windows trying to</p> <p>4 satisfy its contractual obligations. We do not</p> <p>5 conclude that there was a nefarious reason behind</p> <p>6 Monadnock's actions, such as a desire to oust</p> <p>7 Glasswall to pursue use of an affiliated company, but</p> <p>8 we do find that Monadnock could not, whatever the</p> <p>9 reason, properly hold Glasswall in proverbial limbo</p> <p>10 while it decided whether to terminate the</p> <p>11 subcontracts and hire a new subcontractor or</p> <p>12 extracted some damages before completion of the</p> <p>13 window work by Glasswall."</p> <p>14 That was all to say, so your delayed claims,</p> <p>15 we're not putting that delay on Glasswall. That was</p> <p>16 your -- that's more your problem. We are awarding</p> <p>17 you damages on the defects, you know, and the other</p> <p>18 issues, et cetera.</p> <p>19 They didn't make a finding that the contract was</p> <p>20 breached. And, in fact, to counter their argument</p> <p>21 about this tortuous interference because what they</p> <p>22 said was, "When faced with those obstacles, Monadnock</p> <p>23 did not exercise its right to terminate the</p> <p>24 subcontracts." What their tortuous interference is,</p> <p>25 which is not a proper tortuous interference, Judge,</p>


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<p style="text-align: right;">Page 18</p> <p>1 and it would be a waste of this Court's time to hear 2 it, because, as Your Honor knows, you've got to be an 3 unrelated third party to a contract. 4 If we go into the arbitration award as well as 5 the facts as they've laid it out, Related Companies 6 was a directly interested party in the contract. 7 They were -- they were part of the ownership. HPS, 8 the two HPSs were part of the ownership. Bruce Beal 9 is a corporate officer of Related Companies. So this 10 whole idea that they tortuously interfered with the 11 contract with Monadnock, who was a co-investor in the 12 project, is going to fall on its face legally, Judge. 13 But the whole point is why do they want this 14 tortuous interference claim? They want it because 15 they say they're not responsible for the 16 indemnification and guaranty obligations under the 17 bond. Well, we still don't know whether, in fact, 18 they have that obligation or not because it's being 19 litigated in federal court in New York, and as he 20 indicated, Glasswall filed in a complaint in New 21 York. They're in New York as a Plaintiff as well. 22 MR. CINQUE: That's absolutely not true. 23 MR. DEAN-KLUGER: The only thing filed was in 24 state court to confirm the arbitration award. That 25 was dismissed, and they confirmed it in federal</p>	<p style="text-align: right;">Page 20</p> <p>1 owners. HPS 50th Avenue Associates for Parcel A. 2 HPS Borden Avenue Associates for Parcel B. 3 Collectively owners. The owners each had several 4 members. But an affiliate of the Related Companies 5 and Monadnock were principals of both of the owners. 6 Related served, in effect, as the managing owner in 7 connection with the development of the building. 8 So, Your Honor, this whole tortuous interference 9 issue, Related was, as was Monadnock, was part of the 10 ownership of this project. 11 MR. CINQUE: Your Honor, the contract was with 12 Glasswall. 13 MR. LODISH: Excuse me. I wasn't done. 14 THE COURT: Hold on. 15 MR. LODISH: Excuse me. Down here we wait. 16 Okay. 17 THE COURT: No, no, Mr. Lodish, please. Go 18 ahead. 19 MR. LODISH: Your Honor, so the issue is, as it 20 happened before, they are throwing -- they are 21 throwing suits and claims wherever they can. They're 22 trying to see what is going to stick. Your Honor, 23 the whole issue that you focused on, which was 24 correct and this was -- the order was the second time 25 you had done it in two years was, wait a second,</p>
<p style="text-align: right;">Page 19</p> <p>1 court. 2 MR. CINQUE: The only claim against Glasswall 3 now, Your Honor, is confirmation that it's been taken 4 cared of and then a fraudulent conveyance claim. And 5 what Mr. Lodish said, Your Honor, the contract at 6 issue here is between Monadnock and Glasswall. 7 That's the contract that had the arbitration clause. 8 That's what was litigated. That's what Monadnock was 9 found to have breached. 10 Glasswall's asserted claim that these parties 11 that are not parties to the contract, matters between 12 Glasswall and Monadnock, not Beal, not Related, not 13 HPS, the contract to supply windows was those 14 parties, Glasswall and Monadnock, and the claim would 15 be that Monadnock was induced to breach by Related 16 and Beal, who are not parties in New York. 17 MR. LODISH: Your Honor, let me just -- this one 18 part, here again, from the arbitration award. This 19 is in their -- in the beginning part of the award, 20 just so Your Honor understands the parties. 21 Parcel A and B had different owners. This is 22 affordable housing development. The development was 23 being constructed under affordable housing plan for 24 the City of New York. This is Page 2 of the 25 arbitration award. Parcel A and B had different</p>	<p style="text-align: right;">Page 21</p> <p>1 these are intertwined. The relief and the claims are 2 intertwined and that we have to get to a point where 3 the arbitration award, the enforcement of it, the 4 surety, the indemnification, and the guaranties are 5 decided once and for all. 6 For anything to go forward here on any of these 7 claims runs the real risk of contradicting what's 8 going on in New York, and as Mr. Gilbert pointed out 9 and I pointed out, the briefing schedule under the 10 current issues are all supposed to be done by the end 11 of January and presumably sometime shortly thereafter 12 there will be some decisions. And that would be the 13 only proper time for there even to be a consideration 14 of anything down here, Your Honor. 15 THE COURT: Okay. All right. 16 MR. CINQUE: Yes, Your Honor, just on the 17 contractual arrangements. Monadnock had an agreement 18 with the owners, a construction agreement where they 19 were to supervise the construction. Then Monadnock 20 entered into a subcontract with Glasswall to provide 21 the windows. So there's no privity between Glasswall 22 and the owners. So this conversation about who the 23 owners are is irrelevant. It's just Glasswall and 24 Monadnock. 25 THE COURT: All right. Here is what I'm going</p>

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<p style="text-align: right;">Page 22</p> <p>1 to do. I'm going to leave the stay order in place 2 right now. I want this set in 90 days, and you-all 3 get a date set, and I want you to set it with Judge 4 Thomas, because my five years in the CBL is up this 5 January. Okay. So Judge Thomas and Judge Butcko, in 6 the blind filing system, Judge Thomas got it. 7 MR. LODISH: Then it's going back to him, Your 8 Honor. 9 THE COURT: Why? 10 MR. LODISH: Because he had it before you had it 11 before we moved it to complex. 12 THE COURT: Oh, is that true? 13 MR. LODISH: He had it, yeah. That's perfect. 14 THE COURT: Then the blind filing system may be 15 not so blind. I don't know, but I want this set in 16 90 days. I want to know what's going on in New York, 17 and then at that particular point, it's going to be 18 up for a decision as to whether we reopen the case or 19 not. In other words, I want you-all telling Judge 20 Thomas, that's the issue that's going to be set in 21 front of him, do we take this off inactive status or 22 not. Okay. 23 MR. DEAN-KLUGER: And, Your Honor, just to be 24 clear so that we can get this written out here and 25 not have to, you know, come back or anything, say 90</p>	<p style="text-align: right;">Page 24</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>1 2 3 STATE OF FLORIDA 4 5 COUNTY OF MIAMI-DADE 6 7 I, Dania Alen, Court Reporter, do hereby certify that 8 I was authorized to and did stenographically report the 9 foregoing proceedings and that the transcript, pages 1 10 through 23 is a true and correct record of my 11 stenographic notes. 12 I further certify that I am not a relative, employee, 13 attorney, or counsel of any of the parties, nor am I a 14 relative or employee of such attorney or counsel, nor am 15 I financially interested in the foregoing action. 16 17 Dated this 30th day of December, 2017. 18 19 20 21 22 23 24 25</p> <p style="text-align: center;"> Dania Alen, FPR</p>
<p style="text-align: right;">Page 23</p> <p>1 days to set a status conference in front of Judge 2 Thomas? 3 THE COURT: Well, you can set a hearing. I 4 mean, if you-all -- let's put it this way. If 5 you-all find out that the motions are granted, 6 denied, whoever, whatever happens up in -- up there 7 in New York, I'm sure he'll want to know what 8 happened in that regard. Okay. And if certain 9 things -- you know, you know what you're going to do 10 as far as whatever happens up in New York, you know, 11 Mr. Kluger. So whatever happens, you know, file it 12 in front of Judge Thomas. Tell him that I wanted it 13 revisited in 90 days after those issues were decided 14 in New York. All right. 15 MR. DEAN-KLUGER: Okay. 16 THE COURT: Okay. 17 MR. DEAN-KLUGER: Thank you, Your Honor. 18 MR. LODISH: Thank you, Your Honor. 19 MR. CINQUE: Thank you, Your Honor. 20 (Thereupon, the hearing was concluded at 10:18 21 a.m.) 22 23 24 25</p>	